

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SAMUEL WALTERS,

Plaintiff,

-against-

9:09-CV-1222 (LEK/DRH)

C.O. GARDNER and S. HANNA,

Defendants.

DECISION and ORDER

This matter comes before the Court following a Report-Recommendation filed on February 15, 2012, by the Honorable David R. Homer, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3(c) of the Northern District of New York. Dkt. No. 55 (“Report-Rec.”). After fourteen days from the service thereof, the Clerk has sent the entire file to the undersigned, including the Objections by Plaintiff Samuel Walters (“Plaintiff”), which were filed on March 5, 2012. Dkt. No. 36 (“Objections”).

The Court is to “make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b). Where, however, an objecting “party makes only conclusory or general objections, or simply reiterates his original arguments, the Court reviews the Report and Recommendation only for clear error.” Farid v. Bouey, 554 F. Supp. 2d 301, 307 (N.D.N.Y. 2008) (quoting McAllan v. Von Essen, 517 F. Supp. 2d 672, 679 (S.D.N.Y. 2007)) (citations and quotations omitted); see also Brown v. Peters, No. 95-CV-1641, 1997 WL 599355, at *2-3 (N.D.N.Y. Sept. 22, 1997). “A [district] judge . . . may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). The Court has considered the objections and undertaken

a *de novo* review of the record, and has determined that the Report-Recommendation should be approved and adopted in its entirety.

Plaintiff first objects on the basis that the Report-Recommendation examines the merits of the claims he brought against Defendant C.O. Gardner (“Defendant Gardner”). Plaintiff states that “C.O. S. Hanna is the only defendant in my action. I have made that clear in prior amendments. So, please dismiss [Defendant] Gardner from [the] Complaint.” Obj. at 1. Although it appears that Plaintiff’s Third Amended Complaint does indeed name C.O. Gardner as a defendant, the Court takes note of Plaintiff’s objection and dismisses Defendant Gardner from this action. Dkt. No. 49 at 1, 2.¹

Next, Plaintiff objects to Judge Homer’s recommendation that summary judgment be granted to Defendant C.O. Hanna on all claims. Obj. at 1-2. Accordingly, the Court must review this portion of the Report-Recommendation *de novo*. 28 U.S.C. § 636(b). The Court has therefore reviewed Judge Homer’s findings and recommendations *de novo* – taking all of Plaintiff’s objections into account – and reaches the same conclusion: the facts presented by Plaintiff are insufficient, as a matter of law, to establish a § 1983 claim for failure to protect under the Eighth Amendment.

Accordingly, it is hereby:

ORDERED, that the Report-Recommendation (Dkt. No. 55) is **APPROVED** and **ADOPTED** in its **ENTIRETY**; and it is further

ORDERED, that Defendants’ Motion for summary judgment (Dkt. No. 45) is **GRANTED**

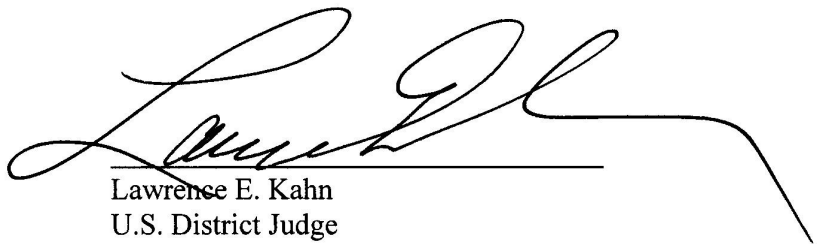
¹ The Court also notes that Judge Homer recommended dismissing all claims against Defendant Gardner. Report-Rec at 11.

as to all claims and all Defendants.

ORDERED, that the Clerk serve a copy of this Order on all parties.

IT IS SO ORDERED.

DATED: March 26, 2012
Albany, New York



Lawrence E. Kahn
U.S. District Judge